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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SHERMAN L. HIGGINS,)	
)	
Petitioner,)	Case No. CV 15-6544-JGB(AJW)
)	
v.)	
)	MEMORANDUM AND ORDER
NEIL McDOWELL, Warden,)	DISMISSING PETITION
)	
Respondent.)	
_____)	

This habeas corpus petition challenges petitioner's 2010 conviction of conspiracy to commit first degree burglary. [Petition at 2, 5-6].

Petitioner previously has filed a habeas corpus petition in this Court challenging his 2010 conviction and sentence. That petition, which raised six claims for relief, was denied on the merits, and the Ninth Circuit denied petitioner's request for a certificate of appealability. [Case No. CV 12-9338-JGB(AJW)].

A federal court must dismiss a successive petition that raises the same grounds for relief as a prior petition. 28 U.S.C. § 2244(b)(1). A federal court must also dismiss a successive petition raising a new ground for relief unless the petitioner can show that

(1) the claim rests on a new, retroactive, constitutional right or (2) the factual basis of the claim was not previously discoverable through due diligence, and those new facts establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(A)-(B). It is not the district court, however, that decides whether a successive petition may proceed. Rather, "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Absent authorization from the Court of Appeals, this Court lacks jurisdiction over a successive petition. Burton v. Stewart, 549 U.S. 147, 152-153, 157 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001), cert. denied, 538 U.S. 984 (2003).

Because petitioner has not obtained leave from the Court of Appeals to file a successive petition, the petition for a writ of habeas corpus is dismissed for lack of jurisdiction.

It is so ordered.

Dated: September 30, 2015



Jesus G. Bernal
United States District Judge